

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
JUN 21 2017
Clerk, U.S. District Court
District Of Montana
Missoula

WAYNE A. HUSSAR, II,

Plaintiff,

vs.

LEWIS AND CLARK COUNTY
DETENTION CENTER,

Defendant.

CV 17-55-M-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendation on June 12, 2017, recommending denial of Plaintiff Wayne Hussar's ("Hussar") motion to proceed in forma pauperis in this matter. Hussar is not entitled to object to the Findings and Recommendation. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (providing that an application to proceed in forma pauperis is not a nondispositive matter under 28 U.S.C. § 636 (b)(1)(A)). As a result, the Court reviews the Findings and Recommendation for clear error. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000)

(citations omitted).

Having reviewed the Findings and Recommendation, the Court finds no clear error in Judge Johnston's conclusion that Hussar is subject to the three strikes provision of 28 U.S.C. § 1915(g) and fails to meet the "imminent danger of serious physical injury" exception. Accordingly, the Court agrees with Judge Johnston that Hussar should not be allowed to proceed in forma pauperis. As such, Hussar must pay the \$400.00 filing fee required by 28 U.S.C. § 1914(a). If Hussar fails to pay the filing fee within 30 days from the date of this Order, the Clerk of Court is instructed close this case and enter judgment in favor of Defendants.

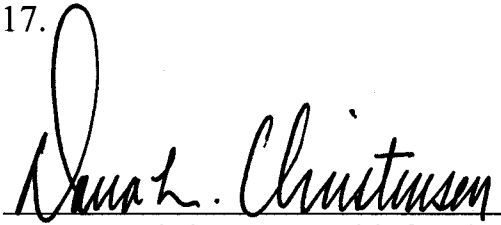
There being no clear error in Judge Johnston's Findings and Recommendation, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendation (Doc. 4) are ADOPTED IN FULL.

(2) Hussar's Motion to Proceed in Forma Pauperis (Doc. 1) is DENIED pursuant to 28 U.S.C. § 1915(g).

(3) The Clerk of Court is directed to close this case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure should Hussar not pay the \$400.00 filing fee within 30 days from the date of this Order.

Dated this 21st day of June, 2017.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court